

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

NO. 5:14-CV-124-BO

UNITED STATES OF AMERICA &)	
STATE OF NORTH CAROLINA, et)	
al., ex rel. VIRGINIA HAMILTON)	
& LAURA THOMAS,)	
)	PLAINTIFF'S MOTION TO
Plaintiff,)	REOPEN CASE, ENFORCE A
)	SETTLEMENT AGREEMENT and
v.)	ENTER JUDGMENT AGAINST
)	DEFENDANTS
DR. JOHN SUNGHOON WON, et)	
al.,)	
)	
Defendants.)	

The United States of America, by and through the United States Attorney for the Eastern District of North Carolina, on behalf of the Department of Health and Human Services, and the State of North Carolina, by and through the North Carolina Attorney General's Office (collectively the "Government"), moves this Court to reopen this case, enforce a settlement agreement (attached as Government Ex. A) reached by the parties on August 21, 2015, and enter a judgment against Defendants in accordance with the terms of said agreement. Defendants consent to entry of that judgment, as indicated by their signatures on the accompanying consent judgment.

In support of this motion, the Government shows unto the Court the following:

1. Defendants, from January 1, 2008 through December 31, 2011, submitted or caused to be submitted claims for payment to the North Carolina

Medicaid Program in violation of the North Carolina False Claims Act, N.C.G.S. §§ 1-605, et seq., the Medicaid Assistance Provider Claims Act, N.C.G.S. §§ 108A-70.10, et seq., and the federal False Claims Act, 31 U.S.C. §§ 3729, et seq.

2. On March 6, 2014, a qui tam complaint was filed by relators Virginia Hamilton and Laura Thomas, alleging that Defendants violated both the Federal False Claims Act, 31 U.S.C. § 3729, et seq., and the North Carolina False Claims Act, N.C.G.S. § 1-607, et seq. [D.E. 1].

3. On February 24, 2015, the United States and the State of North Carolina filed a notice of intervention in this action, pursuant to the False Claims Act, 31 U.S.C. § 3730 (b)(2) and (4), as well as North Carolina False Claims Act, N.C.G.S. § 1-608 (B)(2) and (4). [D.E. 21].

4. On August 21, 2015, the parties entered into a settlement agreement whereby Defendants agreed to repay two million two hundred thousand dollars (\$2,200,000.00); with nine hundred thousand dollars (\$900,000.00) being paid within thirty (30) days following the effective date of the settlement agreement; three hundred thousand dollars (\$300,000.00), plus interest, being paid no later than March 31, 2016; and the remaining balance, plus interest, being paid over a five year period under an agreed upon payment schedule. Gov't Ex. A, at 3 – 5.

5. Pursuant to the agreement, in the event that Defendants failed to cure a default within five (5) business days of receiving a notice of default, the remaining balance of the settlement agreement would become immediately due and payable. Gov't Ex. A, at 7.

6. In the settlement agreement, Defendants agreed to consent to a Consent Judgment, in the event that a default was not cured within five (5) business days of receiving a notice of default. Gov't Ex. A, at 7.

7. On December 11, 2015, in light of the settlement presented in open court on December 10, 2015, the Court entered an order directing the Clerk to close the case. In the order, however, the Court retained jurisdiction to reopen this case in the event of noncompliance with the agreed-upon settlement. [D.E. 41]. This is a motion to enforce the provisions of that settlement.

8. On September 1, 2018, Defendants failed to make a payment of \$53,094.00 as required by the payment schedule. Two separate payments (September 13, 2018 in the sum of \$22,000.00; and October 3, 2018 in the sum of \$19,000.00) were received by the Government, resulting in an outstanding balance of \$12,094.00 for the September payment.

9. On December 1, 2018, Defendants failed to make the next payment of \$52,750.00 as required by the agreed-upon payment schedule.

10. On January 4, 2019, the Government sent Defendants a written notice of default, informing them that they were in default of the settlement agreement, and giving them until January 14, 2019, to remit \$64,844.00 to cure the default. As of February 20, 2019, Defendants have submitted only a payment of \$17,500.00.

11. Defendants have defaulted upon the settlement agreement and failed to cure the default within five (5) business days after receiving the notice of default

dated January 4, 2019. As of February 20, 2019, Defendants still owe the Government \$354,490.06 with interest accruing at \$27.78 per day (2.75% per annum).

12. Defendants have agreed to entry of a consent judgment in favor of the Government for \$363,490.06 with interest accruing at \$27.78 per day (2.75% per annum), up through the date of entry of the judgment, plus court costs, and all further costs. Thereafter, pursuant to the Settlement Agreement, the remaining unpaid balance of the settlement amount shall accrue interest at the rate of 12% per annum compounded daily from the date of default on the remaining unpaid total (principal, balance and interest due). Gov't Ex. A, at 7. That consent judgment accompanies this motion.

13. The Counsels of Record for Relators Hamilton and Thomas have consented to the filing of this motion and the consent judgment.

For the foregoing reasons, the Government respectfully requests that the Court reopen this matter and enter judgment against the Defendants for the total of \$354,490.06, plus annual interest at the rate of 2.75%, up through the date of entry of the judgment, plus court costs, and all future costs. Thereafter, the remaining unpaid balance of the settlement amount shall accrue interest at the rate of 12% per annum compounded daily from the date of default on the remaining unpaid total (principal, balance and interest due). The Government is filing a proposed order (which incorporates the agreed-upon consent judgment) with this motion.

Respectfully submitted, this 25th day of February, 2019.

ROBERT J. HIGDON, JR.
United States Attorney

/s/ Asia J. Prince
ASIA J. PRINCE
Attorney for the Plaintiffs
Assistant United States Attorney
310 New Bern Avenue
Suite 800 Federal Building
Raleigh, NC 27601-1461
Telephone: (919) 856-4530
Facsimile: (919) 856-4821
Email: Asia.Prince@usdoj.gov
N.C. Bar #48019

CERTIFICATE OF SERVICE

I do hereby certify that I have this 25th day of February, 2019, served a copy of the foregoing, upon the below-listed party by placing a copy in the U. S. Mail, addressed as follows:

Served by CM/ECF:

Betsy Cook Lanzen
Robert T. Numbers, II
Sandra L.W. Miller
Attorney for Virginia Hamilton

Michael M. Berger
Attorney for State of North Carolina

Robert E. Fields, III
Samuel Pinero, II
Attorney for Laura Thomas

William E. Brewer
Attorney for Defendants

/s/ Asia J. Prince
ASIA J. PRINCE
Attorney for the Plaintiffs
Assistant United States Attorney
310 New Bern Avenue
Suite 800 Federal Building
Raleigh, NC 27601-1461
Telephone: (919) 856-4530
Facsimile: (919) 856-4821
Email: Asia.Prince@usdoj.gov
N.C. Bar #48019